

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:  
CC:PSI:B02  
PLR-135978-07

Date:  
March 27, 2008

### Legend

X =

State =

D1 =

D2 =

D3 =

D4 =

D5 =

Dear :

This responds to a letter dated June 18, 2007, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling regarding X's status as an S corporation under the Internal Revenue Code.

### FACTS

The information submitted states that X was incorporated in State on D1. X made an election to be treated as an S corporation effective D2. X terminated its S election by revocation filed on or about D4, effective D3. X advised the Service that it wished to rescind its revocation on D5.

X represents that the filings of the S election revocation and rescission were not motivated by tax avoidance or retroactive tax planning.

### LAW AND ANALYSIS

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(d)(1) provides that an S election may be terminated by revocation if shareholders holding more than one-half of the shares of stock of the corporation on the day on which the revocation is made consent to the revocation. A revocation made during the taxable year and on or before the 15<sup>th</sup> day of the 3<sup>rd</sup> month thereof shall be effective on the first day of such taxable year, and a revocation made during the taxable year but after such 15<sup>th</sup> day shall be effective on the first day of the following taxable year.

Section 1.1362-2(a)(4) provides that a corporation may rescind a revocation at any time before the revocation becomes effective. A rescission may be made only with the consent of each person who consented to the revocation and by each person who became a shareholder of the corporation within the period beginning on the first day after the date the revocation was made and ending on the date on which the rescission is made.

### CONCLUSION

Based solely on the facts and the representations submitted, we conclude that X revoked its S election on D4, effective D3, and rescinded its revocation on D5. Accordingly, X will be treated as continuing to be an S corporation from D3 and thereafter, provided X's S corporation election was valid and provided that the election was not otherwise terminated under § 1361(d). The shareholders of X must include their pro-rata share of the separately stated and nonseparately computed items of X as provided in § 1366, make any adjustments to basis as provided in § 1367, and take into account any distributions made by X as provided in § 1368. If X or its shareholders fail to treat themselves as described above, this ruling is null and void.

Except as specifically set forth above, no opinion is expressed or implied as to the federal income tax consequences of the transaction described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is, in fact, an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

J. Thomas Hines  
Chief, Branch 2  
Office of the Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes